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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Permasteelisa Group USA Holdings Corp., and
Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa
Cladding Technologies, LTD.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

UNITED STATES of AMERICA for the Use
and Benefit of WEBCOR CONSTRUCTION,
INC. dba WEBCOR BUILDERS, and
WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS,

Plaintiffs,

vs.

DICK/MORGANTI, a joint venture; DICK
CORPORATION; THE MORGANTI GROUP;
AMERICAN CASUALTY COMPANY OF
READING, PA; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA, and DOES 1 through 10, inclusive,

Defendants.

AMERICAN CASUALTY COMPANY OF
READING, PA; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA,

Third Party Plaintiffs,

CIVIL ACTION NO.: 3:07-CV-02564-CRB

ANSWER TO THIRD PARTY COMPLAINT BY
THE PERMASTEELISA THIRD PARTY
DEFENDANTS

1 vs.

2 BOYETT CONSTRUCTION, INC., a California
3 corporation; MARELICH MECHANICAL CO.,
4 INC., a California corporation;
5 PERFORMANCE CONTRACTING GROUP,
6 INC., dba PERFORMANCE CONTRACTING,
7 INC., a Delaware corporation;
8 PERMASTEELISA GROUP USA HOLDINGS
9 CORP., a Delaware corporation fdba
10 PERMASTEELISA CLADDING
11 TECHNOLOGIES, LTD.; PERMASTEELISA
12 CLADDING TECHNOLOGIES L.P., a
13 Delaware limited partnership, fdba
14 PERMASTEELISA CLADDING
15 TECHNOLOGIES, LTD.; ROSENDIN
16 ELECTRIC, INC., a California corporation;
17 THIRD PARTY DOE DEFENDANTS 1
18 THROUGH 20,

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Third Party Defendants.

1 Third Party Defendants Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa
2 Cladding Technologies, LTD. and Permasteelisa Group USA Holding Corp. ("Third Party
3 Defendants"), answer the Third Party Complaint of American Casualty Company of Reading, PA
4 and National Union Fire Insurance Company of Pittsburgh, PA, as follows:

5 1. Answering Paragraph 1 of the Third Party Complaint, Third Party Defendants are
6 without knowledge or information sufficient to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis deny each and every allegation contained therein.

8 2. Answering Paragraph 2 of the Third Party Complaint, Third Party Defendants admit
9 that there was a payment bond for the General Services Administration building project located at 7th
10 and Mission Streets in San Francisco. As to the remaining allegations of Paragraph 2 of the Third
11 Party Complaint, Third Party Defendants are without knowledge or information sufficient to form a
12 belief as to the truth of the allegations, and on that basis deny the remaining allegations contained
13 therein.

14 3. Answering Paragraph 3 of the Third Party Complaint, Third Party Defendants admit
15 that there was a payment bond, the principal on the payment bond was a joint venture known as
16 Dick/Morganti, and the subject project was for the General Services Administration of the United
17 States government. As to the remaining allegations of Paragraph 3 of the Third Party Complaint,
18 Third Party Defendants are without knowledge or information sufficient to form a belief as to the
19 truth of the allegations, and on that basis deny the remaining allegations contained therein.

20 4. Answering Paragraph 4 of the Third Party Complaint, Third Party Defendants admit
21 that the general contractor on the General Services Administration project was Dick/Morganti and
22 that Dick/Morganti entered into at least one or more subcontracts in connection with said project.
23 As to the remaining allegations of Paragraph 4 of the Third Party Complaint, Third Party Defendants
24 are without knowledge or information sufficient to form a belief as to the truth of the allegations, and
25 on that basis deny the remaining allegations contained therein.

26 5. Answering Paragraphs 5, 6 and 7 of the Third Party Complaint, Third Party
27 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
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1 allegations contained in said paragraphs, and on that basis deny each and every allegation contained
2 therein.

3 6. Answering Paragraph 8 of the Third Party Complaint, Third Party Defendants admit
4 that Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa Cladding Technologies, LTD.
5 entered into a written subcontract agreement with Dick/Morganti for the General Services
6 Administration project, that pursuant to said agreement it provided labor, equipment and materials,
7 that Third Party Defendant has claims for providing labor, equipment and materials for said project
8 that it has asserted and intends to pursue by litigation, and that a copy of portions of said Third Party
9 Defendant's subcontract is attached as Exhibit E. Third Party Defendants deny that Permasteelisa
10 Group USA Holding Corp. is a proper party to this action as the subject subcontract was entered into
11 by Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa Cladding Technologies, LTD.,
12 which is a separate entity.

13 7. Answering Paragraphs 9, 10 and 11 of the Third Party Complaint, Third Party
14 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained in said paragraphs, and on that basis deny each and every allegation contained
16 therein.

17 8. Answering Paragraph 12 of the Third Party Complaint, Third Party Defendants admit
18 that this Court has jurisdiction pursuant to the Miller Act, but deny that this Court has jurisdiction
19 pursuant to the Contract Disputes Act.

20 9. Answering Paragraph 13 of the Third Party Complaint, Third Party Defendants admit
21 that venue is proper in this District as its subcontract was to be performed in San Francisco.

22 10. Answering Paragraph 14 of the Third Party Complaint, Third Party Defendants admit
23 that venue is proper in this District as the subject project is located in San Francisco.

24 11. Answering Paragraph 15 of the Third Party Complaint, Third Party Defendants
25 incorporate by reference their responses to Paragraphs 1 through 14, inclusive.

26 12. Answering Paragraphs 16, 17, 18, 19, 20, 21 and 22 of the Third Party Complaint,
27 Third Party Defendants are without knowledge or information sufficient to form a belief as to the
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1 truth of the allegations contained in said paragraphs, and on that basis deny each and every
2 allegation contained therein.

3 Third Party Defendants allege the following affirmative defenses:

4 FIRST AFFIRMATIVE DEFENSE

5 (Failure to State A Cause of Action)

6 Third Party Defendants allege that the Third Party Complaint fails to state facts sufficient to
7 constitute a cause of action against Third Party Defendants.

8 SECOND AFFIRMATIVE DEFENSE

9 (Reservation of Rights)

10 Third Party Defendants have insufficient knowledge or information on which to form a belief
11 as to whether they may have additional, as yet unstated, affirmative defenses available. Third Party
12 Defendants therefore reserve the right to assert additional affirmative defenses in the event they
13 become appropriate.

14 WHEREFORE, Third Party Defendants prays for judgment as follows:

- 15 1. That Third Party Plaintiffs take nothing from Third Party Defendants;
16 2. That the Third Party Complaint be dismissed with prejudice;
17 3. That Third Party Defendants recover costs of suit herein, including attorneys' fees;
18 and
19 4. For such other relief as is just and proper.

20 HEYMAN • DENSMORE LLP

21
22 By 

23 ROGER P. HEYMAN

24 Attorneys for Permasteelisa Group USA Holdings Corp., and
25 Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa
26 Cladding Technologies, LTD.
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DEMAND FOR JURY TRIAL

Third Party Defendants Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa Cladding Technologies, LTD. and Permasteelisa Group USA Holding Corp, hereby demand a jury trial in this case.

HEYMAN • DENSMORE LLP

By

ROGER P. HEYMAN

Attorneys for Permasteelisa Group USA Holdings Corp., and
Permasteelisa Cladding Technologies, L.P. fdba Permasteelisa
Cladding Technologies, LTD.

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, LUISA M. SOLIS, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is Heyman • Densmore LLP, 21550 Oxnard Street, Suite 450, Woodland Hills, California 91367.

On September 14, 2007, I served the document(s) described as ANSWER TO THIRD PARTY COMPLAINT BY THE PERMASTEELISA THIRD PARTY DEFENDANTS on the interested parties in this action by enclosing a true copy of the document(s) in a sealed envelope addressed to the addressee(s) as listed on the attached service list:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 21550 Oxnard Street, Suite 450, Woodland Hills, California 91367 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Heyman • Densmore LLP, 21550 Oxnard Street, Suite 450, Woodland Hills, California 91367.

☐ ☐ BY FED EX ☐ UPS ☐ OVERNITE EXPRESS: I deposited such envelope in a facility regularly maintained by ☐ FED EX ☐ UPS ☐ OVERNITE EXPRESS with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FED EX ☐ UPS ☐ OVERNITE EXPRESS authorized to receive documents at Heyman • Densmore LLP, 21550 Oxnard Street, Suite 450, Woodland Hills, California 91367 with delivery fees fully provided for.

☐ BY FACSIMILE: By use of facsimile machine number (818) 703-9495, I served a copy of the within document(s) on the interested parties at the facsimile numbers listed on the attached Service List. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

☐ BY PERSONAL SERVICE: I caused said document(s) to be delivered to the addressees listed on the attached Service List.

☐ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ [Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on September 14, 2007, at Woodland Hills, California.


LUISA M. SOLIS

SERVICE LIST

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Raymond M. Buddie, Esq. Rick W. Grady, Esq. Peckar & Abramson, P.C. 250 Montgomery Street, 16 th Floor San Francisco, California 94104	Attorneys for Defendants Dick/Morganti; Dick Corporation; and The Morganti Group, Inc. and American Casualty Company of Reading, PA; National Union Fire Insurance Company of Pittsburgh, PA
J. Morrow Otis, Esq. Steven L. Iriki, Esq. OTIS CANLI & IRIKI 625 Market Street, 4 th Floor San Francisco, California 94105-3306	Attorneys for Third-Party Defendant Performance Contracting, Inc. erroneously sued as Performance Contracting Group, Inc.